Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

WASHINGTON, MARLBORO AND ANNAPOLIS MOTOR LINES, INC.,
Petitioner,

v.

LEON HENDERSON, Price Administrator, Office of Price Administration.

BRIEF IN SUPPORT OF PETITION.

POINT I.

THE RATE INCREASE OF THE PETITIONER WAS NOT A "GENERAL INCREASE" WITHIN THE MEANING OF THE ACT OF OCTOBER 2, 1942.

The term "general increase" has no defined meaning in the law of carriers or public utilities. The term nowhere appears in the Interstate Commerce Act, and while it has been used in decisions of the Commission no legal significance attaches under the Act to the use of the same.

The Interstate Commerce Commission has described as general, increases when they affect a small percentage of a particular class of commodity or on particular commodities in a particular area, as the Court below pointed out.

Boots and Shoes from New York Points, 91 I. C. C. Rep. 591;
Grain and Grain Products, 122 I. C. C. Rep. 235.

However, in many other cases where the rates of common carriers were involved, it has clearly demonstrated the common acceptance of the words *general increase.*

Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545;
General Commodity Rate Increases, 1937, Ex Parte No. 115, 229 I. C. C. 435;
Fifteen Percent Case, 1937-1938, Ex Parte No. 123, 226 I. C. C. 41;
Fifteen Per Cent Case, 1917, 45 I. C. C. 303.

Recourse to the Congressional proceedings had in connection with the passage of the Act of October 2, 1942, would indicate the intent of Congress was that the provisions of said Act would apply only to common carriers and public utilities when an increase in rates, charges or fares was made which applied to the majority of users of the particular service involved, who enjoyed the same class of service.

The Congressional Record of Wednesday, September 30, 1942, Vol. 88, No. 166, Pg. 7877, sets forth the original amendment dealing with common carriers and public utilities as proposed by Senator Norris of Nebraska:

"Provided, That rates charged by any common carrier or public utility on September 15, 1942, shall not be increased without the consent of the President.

"Provided further, That nothing in this Act shall be construed as affecting the power or authority of any Federal, State or Municipal authority or agency to reduce prices, rates or charges subject to its jurisdiction."

The proposed Bill to Amend the Emergency Price Control Act, with the Norris amendment (H. R. 7565) went to conference, and on October 2, 1942, the bill as agreed upon by the conferees was reported to the Senate. (Cong. Record, Oct. 2, 1942, Vol. 88, No. 168, Pg. 7970-71)

As finally adopted and approved the "Norris" amendment read:

"Provided, That no common carrier or other public utility shall make any general increase in its rates or

charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President or such agency as he may designate, and consents to the timely intervention by such agency before the Federal State or Municipal authority having jurisdiction to consider such increase."

As finally approved the Act provided: *"That no common carrier or public utility shall make any general increase in its rates or charges* * * *"

This language had been substituted for that providing *"That rates charged* * * * *shall not be increased without the consent of the President."* The word "general" was used to qualify increase in rates.

Congress is presumed to legislate with knowledge of the common meaning of words and the administrative interpretation of them. *American Trucking Association* v. *U. S.*, 17 F. Supp. 655, *State of Florida* v. *U. S.*, 292 U. S. 11, 78 L. ed. 1077, *Chicago M. & S. & P. R. Co.* v. *Tompkins*, 176 U. S. 167, 44 L. ed. 417.

As the court below pointed out in its opinion, the term *"general increase"* has no well defined meaning in the law of carriers or of public utilities, R. 29, it must therefore be presumed that Congress intended that the common meaning be applied to the term "general".

Webster's Twentieth Century Unabridged Dictionary defines the word "general" as, 1. Relating to all of a genus, class, or order; including all of a kind; as, a general law of the animal kingdom applies to all animals alike; 2. Comprehending many species of individuals; not special or particular; as, it is logical to draw a general conclusion from a particular fact; 3. Lacks in signification; not restrained or limited to a particular import; not specific; not directed to a single object; as, a loose and general expression; 4. Public; common; relating to all; comprehending the whole community; common to many or the greatest number; as, a general opinion; a general custom; a general practice; 5. Having or relating to all; common to the whole; as, Adam, our

general sire; 6. Extensive, though not universal; not limited in scope, authority conferred, etc.

The definition "general" meaning pertaining to the majority, common to the greatest number, was accepted in a case involving a contract of rate for electricity. *Steele-Smith Dry Goods Co.* v. *Birmingham Ry. Light & Power Co.*, 15 Ala. App. 271, 73 So. 215.

It is admitted that the rate increase herein involved applied to only 2300 passengers out of more than 13,000 passengers carried daily on the petitioner's buses. On the buses operating from 11th and Pennsylvania Avenue, Northwest, Washington, D. C. to Seat Pleasant, Maryland, more than 7700 passengers were transported each day.

The petitioner made no increase in rate of fare for the other 5400 passengers riding on these buses. There was no increase in the rate of fare for passengers riding on the Seat Pleasant buses between 11th and Pennsylvania Avenue, Northwest, and the District Line at Southern Avenue and Bowen Road. There was no increase made in the fare for passengers riding between the District Line and Seat Pleasant. There was no increase in the District of Columbia intrastate fare or the Maryland intrastate fare.

Furthermore, there was no increase in the interstate fare for passengers riding between 11th and Pennsylvania Avenue, Northwest and Suitland, Silver Hill, or Forestville, Maryland.

The interstate passengers to Suitland, Maryland, rode 7 miles from 11th and Pennsylvania Avenue, Northwest to their destination and paid fifteen cents (15¢). The passengers riding interstate from 11th and Pennsylvania Avenue, Northwest to Silver Hill, Maryland, rode 8 miles and paid a fare of fifteen cents. The passengers boarding the buses of the petitioner at 11th and Pennsylvania Avenue, Northwest, destined for Forestville, Maryland, rode 10 miles and paid an interstate fare of fifteen cents.

But the passengers riding from 11th and Pennsylvania Avenue, Northwest, to Seat Pleasant, Maryland getting the

same quality of service, and riding 9½ miles, the major portion of their journey being over the same route as the others, paid only ten cents (10¢) for the interstate ride, although on September 15, 1942, the combined authorized intrastate fares for such a ride were fifteen cents (15¢). This fare when raised to fifteen cents (15¢) to conform to the charge for like quantity and quality of service, was held to be a "general rate" increase within the meaning of the Act of October 2, 1942.

It is respectfully submitted that the court below has misconstrued the meaning of the term "general increase". Although it is admitted that the rate increase applied to interstate riders on the buses operating between the District of Columbia and Seat Pleasant, Maryland, it is improper to consider them apart from the other residents of Prince Georges County who use the buses of the petitioner, in determining that they constitute a "class", all of whom are about equal distance from 11th and Pennsylvania Avenue, Northwest, and all of whom were receiving the same kind of service.

The test in this case should be whether the rate increase of October 25, 1942, was "general" as to all passengers using the buses of the petitioner who were receiving the same or like service, both as to quantity and quality.

When this test is applied, it must be decided that the rate increase put into effect by the petitioner was not a "general" increase within the meaning of the Act of October 2, 1942, and that, consequently, notice to the President or his designated agent was not required.

POINTS 2 AND 3.

THE INCREASE IN RATES WAS MADE BY THE PETITIONER WHEN FILED ON SEPTEMBER 23, 1942, UNDER THE INTERSTATE COMMERCE ACT AND RELATED REGULATIONS, ALTHOUGH NOT EFFECTIVE UNTIL OCTOBER 25, 1942, AND THE LAWFULNESS OF SUCH RATES WAS NOT ALTERED OR IMPAIRED BY THE ACT OF OCTOBER 2, 1942.

The questions which are here presented for the consideration of the Court are unique.

They embrace the construction of several sections of the Interstate Commerce Act, which in all probability would have never required judicial determination, but for the exigencies produced by the present world conflict in which this nation is now engaged.

They further involve the applicability of the Act of October 2, 1942, retrospectively to these sections of the Interstate Commerce Act.

The petitioner filed with the Interstate Commerce Commission on September 23, 1942, schedule of tariffs increasing its interstate rates for one way passenger fares between Washington, D. C. and Hillside, Maryland, Capitol Heights, Maryland, Maryland Park, Maryland and Seat Pleasant, Maryland, from ten cents (10¢) to fifteen cents (15¢) to become effective on October 25, 1942, thirty-two days later. Filing of the schedule of tariffs was in accordance with the Interstate Commerce Act, Part II, Sections 217 (a) and (c), which provided:

> "(a) Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route

of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful."

"(c) No change shall be made in any rate, fare, charge or classification, or any rule, regulation or practice affecting such rate, fare, charge or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after thirty days notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change shall take effect. *The commission may, in its discretion and for good cause shown,* allow such change upon notice less than that herein specified or modify the requirements of this section with respect to the posting and filing either in particular instances or by general order applicable to special or peculiar circumstances or conditions."

On September 23, 1942, there were in force certain regulations approved June 8, 1937, by the Interstate Commerce Commission pursuant to Section 217 of the Motor Carrier's Act, to govern the construction and filing of common carrier passenger fare publications. Rule No. 5 of which provided:

"Except as provided in Rule 4, and unless otherwise authorized by the Commission, *fares and charges which have been filed by the Commission must be allowed to become effective and remain in effect for a period of at least thirty days before being changed, cancelled or withdrawn.*" (Italics supplied)

The order of the Interstate Commerce Commission made pursuant to section 217 of the Motor Carrier's Act has the same force as a statute, since it pertained to the fixing of rates.

This court has repeatedly held that rate fixing is legislative in character.

B. & O. R. Co. v. *U. S.*, 298 U. S. 349, 80 L. ed. 1207.
B. & O. R. Co. v. *U. S.*, 264 U. S. 258, 68 L. ed. 668.
St. Joseph Stock Yards v. *U. S.*, 298 U. S. 38, 80 L. ed. 1033.
Honolulu Rapid Transit Co. v. *Hawaii*, 211 U. S. 282, 53 L. ed. 186.
Prentis v. *Atlantic Coastline Co.*, 211 U. S. 210, 53 L. ed. 150.

The petitioner asserted in its answer to the complaint of the defendant filed in the District Court, "that under Rule 5 of the Interstate Commerce Commission Regulations * * * the rates and charges filed with said Commission on September 23, 1942, as aforesaid, had to become effective on October 25, 1942, unless modified or suspended by said Commission prior to that date * * *; that no provision was made by said Commission to postpone the effective date of increased fares and charges by the waiver of rules of traffic circulars until October 29, 1942 (No. 12745, M-34800), four days after the effective date of said increase." (R. 16)

The District Court upheld the contention of the petitioner and found that the rate increases of the petitioner "were made when they were filed with the Commission * * *", and not when they became effective. Under the practice adopted by the Interstate Commerce Commission by the promulgation of Rule 5, a rate was made by a motor carrier when it was filed. By the making of a rate it is meant the action of putting into process an increase in rates.

Under the Motor Carrier Act and related regulations of the Interstate Commerce Commission, a motor carrier put such rate into process on filing it. The motor carrier there-

after being required to put the new rate made by such filing into effect on the date shown on the schedule.

The motor carrier once having filed the schedule of tariffs making the new rate, lost further prerogative with regard to it. Once having exercised the privilege of making a new rate, the exercise of further right was lost to the motor carrier, to the extent that it must have permitted such new rate to become effective and remain in effect for a period of at least thirty days, before changing, canceling or withdrawing it.

Rates filed with the Interstate Commerce Commission have the force of statutes. The *rate on file* is the only lawful charge and deviation from it is not permitted under any pretext. 97 A. L. R. 418.

Thousands of new rates are filed annually by carriers engaged in interstate commerce. Time alone would not permit hearings to be held in the majority of these cases. The Congress has thrown up certain safeguards against the filing of unreasonable rates by such carriers so as to dispense with the necessity of most hearings.

In the case of Motor Carriers it has permitted them to make increase in rates pursuant to section 217 of the Interstate Commerce Act. These rates become effective automatically if not suspended or deferred by the Commission under section 216 (g).

The Commission has the power after rates are in effect to inquire into their reasonableness. The mere allowance of the use of a rate does not make the question of its reasonableness *res adjudicata.* (Section 216 (e))

This practice is, however, not in accordance with that followed by many Public Utilities or Public Service Commissions. There, an application or petition is filed by the common carrier or utility interested in a new rate. The usual practice is to thereafter hold a public hearing and adduce evidence regarding the propriety of the new rate sought.

Thereupon, findings of fact are made by the commission and a formal order passed authorizing the new rate, if it is found to be warranted.

In such cases the new rates are not made until the formal order of such commission is passed.

Realizing the impossibility of adopting such a procedure for the Interstate Commerce Commission, the Congress set up the mechanics for an entirely different kind of procedure which has functioned both effectively and efficiently in handling the myriad rates filed annually.

A rate fixed in the manner prescribed by Part II, Sec. 217 of the Interstate Commerce Act carried as much force in law, as one formally made by an order of the Commission.

The right of the Interstate Commerce Commission to fix the manner and time, and the conditions under which a new rate is made, cannot be challenged. Legislative Acts of Commissions in establishing rates under authority delegated by state or Federal statutes are presumed to be valid in the absence of unequivocal and convincing evidence to the contrary.

Missouri P. R. Co. v. *Norwood,* 283 U. S. 249, 75 L. ed. 1010.
Des Moines Gas Co. v. *Des Moines,* 238 U. S. 153, 59 L. ed. 1244.
Ex Parte Young, 209 U. S. 123, 52 L. ed. 714.
Chicago Mt. St. R. Co. v. *Tompkins, supra.*

The court below in reversing the District Court has based its conclusion that the rate was not made when filed, on the proposition that Sec. 216 (g) of the Act authorizes the Commission, upon complaint of any interested party or upon its own initiative to hold a hearing concerning the lawfulness of the rate, and for this purpose to suspend the operation of such schedule for a period of seven months, and pursuant to the provisions of Section 216 (e), to prescribe the lawful rate or fare.

The fallacy of this conclusion and the error of the reasoning of the court below is apparent from a reading of section 216 (g). This section provides that "the commission * * * upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate or fare or charge, * * * and pending such hearing and the decision thereon the Commission, by filing with such schedules and delivering to the carrier or carriers affected thereby a statement in writing of its reason for such suspension, *may from time to time suspend the operation* of such schedule and *defer the use of such rate,* or change, * * * but not for a period longer than seven months beyond *the time* when it would otherwise *go into effect.*"

What has the suspension of the operation of the schedule and the deferring of the use of the new rate got to do with fixing the time that the rates were made?

This procedure goes only to delay the putting into effect of new rates which have been made. The language of Sec. 216 (g) is capable of only one interpretation. It does not *suspend* or *defer* the *making* of a rate or charge. Quite the contrary, it recognizes that a valid rate has already been made or exists, and provides for its suspension and defers its use "but not for a longer period than seven months beyond the time it would otherwise *go into effect.*"

There is a vast difference between the meaning of the word "make" as ordinarily used, and as defined by the decision of the court below.

Apropos of counsel's contention is that part of the court's opinion dealing with the retroactivity of the Act of October 2, 1942.

There it was held that regardless of whether the rate was *made* on September 23, 1942, when it was filed, that "Congress made no exception in the Act, in favor of carriers who had filed schedules prior to October 2, 1942, but had not put them into *actual effect* before September 15, 1942." (Italics supplied)

A settled legislative policy such as the Interstate Commerce Act should not be altered or the operation of it in any way impeded by providing the Act of October 2, 1942, through judicial interpretation, with a meaning not expressed in explicit language.

This court has said that the conclusion is not lightly to be reached that the Congress would have undertaken to change a policy of such great importance without explicit language indicating that purpose.

Fla. v. *U. S., supra.*
Ann Arbor R. R. Co. v. *U. S.*, 281 U. S. 658, 74 L. ed. 1098.

Is the Act of October 2, 1942, Retroactive?

The court below decided that the Act of October 2, 1942, having been enacted subsequent to the Interstate Commerce Act supersedes that Act to whatever extent may be necessary to achieve its own purpose.

Having already decided that the rates of the petitioner were not made until October 25, 1942, when they were put into operation, such a conclusion is *obiter dictum.*

Counsel would hesitate to suggest that this conclusion of the court, not material to the decision but which would invalidate the new rates of the petitioner even if they had been lawfully made on September 23, 1942, connotes an indecision as to the accuracy of that part of its decision dealing with the time of the making of the rate.

Counsel does suggest, however, that the Court below was in error in both conclusions.

The Act of October 2, 1942, as regards common carriers and utilities is devoid of expression which would indicate that the prohibition contained therein is retrospective in operation so as to affect the validity of rates made prior to its approval.

True, the Act prohibits an increase in common carrier and public utility rates above their September 15, 1942, levels, unless thirty days notice is given the President or

his agent, together with the right to intervene "before the Federal, State, or Municipal authority having jurisdiction to consider such increase."

But, the date September 15, 1942, does not, nor is it intended by the language of the Act, to apply to rates made, authorized or approved, or which were put into effect before October 2, 1942, and after September 15, 1942.

The date September 15, 1942, applies to the time to fix the basis of the levels to be used in the functioning of the Act.

The Act does not provide that it shall be effective from September 15, 1942.

To allow the court below to hold that the Act affects or destroys the validity of lawful rates which were made or put into effect before October 2, 1942, is to permit it to legislate language into the Act.

It is worthy of passing observation, particularly in view of the legal contrariety, to point out that the Court below found that the increased rates that the petitioner was charging on October 25, 1942, were unlawful.

If, as the Court below decided, the putting into actual effect constituted the *making* of the increase in rates within the meaning of the Act of October 2, 1942, then it is the charging or collection of the rates which is unlawful, and not the authorizing of the rates by agencies of competent jurisdiction.

It has never been charged that the rate increase put into effect by the petitioner was inflationary.

CONCLUSION.

Counsel respectfully submits that the rate increase made by the petitioner was not a *"general" increase* within the meaning of the Act of October 2, 1942, and that its new rate was made on September 23, 1942, under the Interstate Commerce Act and regulations.

The petitioner has shown good cause for the granting of the petition.

In the interest of justice, this Court should issue a writ of certiorari and review the judgment of the Court of Appeals of the District of Columbia.

Respectfully submitted,

JAMES P. DONOVAN,
Attorney for Petitioner.